

TESTIMONY OF LAWRENCE S. KATKOWSKY

Michigan House of Representatives

STANDING COMMITTEE ON TRANSPORTATION

June 6, 2006

Members of the Committee, Guests, and other interested persons:

It is my pleasure to testify before you this morning on the subject of the proposed law for adult choice in the usage of motorcycle helmets before you this morning.

I am a trial lawyer from Bingham Farms, Michigan specializing in motorcycle and ORV litigation statewide and nationally. I have investigated more motorcycle accidents than probably anyone in the country and I am also a certified motorcycle safety instructor in southeast Michigan. I have dealt with the Michigan motorcycle helmet law since the mid-1970s. I have also engaged in litigation involving motorcycle helmets and their relationship to head injuries for many years and am personally acquainted with most of the experts on the subject in the United States. I have personally observed testing of helmets at DOT approved laboratories and participated in many seminars on the subject.

The perspective that I wish to bring to the hearing this morning is one of the trial lawyer being confronted with proving or disproving whether a head injury could have been prevented by a DOT "approved" helmet.¹ The subject generally comes up in two contexts:

1. A helmeted rider is involved in a crash and the helmet fails. If the helmet had not failed, would the rider have survived in a non-vegetative state?

OR

2. A rider wearing no helmet or one which does not meet DOT standards is involved in an accident and dies or suffers a head injury which places him in a permanent vegetative state. If the rider had been wearing a DOT "approved" helmet, would he have suffered the injury?

1

The Federal government, in fact, has stated in its interpretive letters, that the government does not approve helmets and that 49 C.F.R. §571.218 does not approve helmets. The current Michigan law requires that the Department of State Police approve helmets.

When confronted with these questions I and every other trial lawyer like me, plaintiff or defense, takes the facts to an expert on helmets.² The facts usually consist of a police accident report, a reconstruction of the accident to give the attorneys the speed of the collision, the speed of the head of the rider with the impacted surface, the nature of the impacted surface, the medical records and/or autopsy reports and the helmet itself.

In every single case that I have ever had where the impact was 35 mph or over **every** expert, plaintiff or defense, have told me that a helmet would not have prevented the closed head injury or fracture which caused the death or the injury of the rider.

In 95% of all cases where the impact was 25 mph or over the case is rejected by the expert because, even though the impact was to the head, the helmet still could not have prevented same because a helmet cannot prevent injury to such places as the cerebellum, the facial areas, and cannot in any way prevent basilar skull fractures.

The upshot is that I, as a seasoned trial lawyer with a particular expertise in motorcycle products including helmets, only can accept **one** in **fifty** of all motorcycle helmet cases referred to me involving a failed helmet, because I cannot obtain the testimony of a reputable expert who will testify that the helmet would have prevented the injury in that particular case.

To close my testimony I wish to relate to you the story of Tom Kanthak who was involved in a motorcycle crash in Battle Creek in August 1997 when a car turned left in front of his motorcycle which was traveling at about 25 mph at the time. Tom was wearing a DOT "approved" full face helmet which had been appropriately sized to his head. Upon the collision Tom flew into the air over the car, did a somersault, and landed on his shoulder blade, skidding along the pavement. As he skidded his helmet, which was fully fastened, rotated forward off of his head and his unhelmeted head struck the curb causing severe skull fractures from which Mr. Kanthak succumbed 12 hours later.

Experts on both sides agreed that the helmet was defectively designed and should not have come off as it did. But the helmet manufacturer, a well-known Canadian manufacturer, in a desperate move, engaged the services of L. J. Dragovic, M.D., the Medical Examiner of Oakland County and a nationally prominent forensic pathologist. Dr. Dragovic submitted the attached letter which the Court did not accept because it was too close to trial. The letter, though, stated,

As a result of being airborne upon the collision of his motorcycle with the automobile the back of Mr. Kanthak's head impacted an unyielding surface resulting in brain lag

There are only a handful of these persons in the country because helmet research has not been subsidized by the federal or state governments to any extent and the none of the major manufacturers have been "encouraged" to do any meaningful research. The reasons why will become apparent further in my testimony.

within his skull. This phenomenon [known as "coup counter-coup"] is a physical characteristic of a human head in motion, and is in effect with or without ANY helmet on the head.

While Mr. Kanthak sustained a non-displaced fracture of the occipital bone which was an integral part of the injury pattern, it was not the fracture lines in the bone of the skull that caused his death; rather, it was the severe brain swelling resulting from the subdural bleeding and the contre-coup contusions in the front part of the brain that caused his demise.

The described mechanism is invariably present in this type of head trauma and is irrelevant of [*sic*] presence of a helmet on the head.

In other words, the helmet manufacturer as its ultimate defense, stated that it doesn't work!

Thank you very much.

L.J. DRAGOVIC, M.D.
Forensic Pathologist & Neuropathologist
44 Beverly Road, Grosse Pointe Farms, MI 48236
Bus. Ph.: (248) 858-4046 FAX: (248) 452-9173
Home Ph.: (313) 882-5729 Cell: (248) 343-0854

January 8, 2003

Kristen L. Getting, Esq.
Early, Lennon, Crocker & Bartosiewicz, P.L.C.
Attorneys at Law
900 Comerica Building
Kalamazoo, MI 49007-4752

Re: Kanthak v Gallet Securite Internationale, et al.
Your File No.: 138-309

Dear Ms. Getting:

Pursuant to your request I have reviewed the police records and reports, the medical records of Battle Creek Health System, the deposition transcripts of Ms. Artis, Mr. Lake, Mr. W. Kanthak, Dr. Kress, and Mr. Coles, as well as Dr. Webber's report, in reference to the above captioned matter.

It is obvious that all the major arguments about the particular helmet model have been misdirected by the general misunderstanding of the mechanism of the cranio-cerebral injuries sustained by the deceased, Mr. Thomas B. Kanthak.

As a result of being airborne upon the collision of his motorcycle with the automobile, the back of Mr. Kanthak's head impacted an unyielding surface resulting in brain lag within his skull. This phenomenon is a physical characteristic of a human head in motion, and is in effect with or without ANY helmet on the head.

The particular injury pattern that results from this physical phenomenon includes tearing of the bridging veins, resulting in subdural bleeding and the contre-coup bruises of the surface of the brain opposite to the actual point of impact. The bruises of the brain cortex cause the brain to react by swelling. The brain also reacts by swelling to the pressure on it rendered by the space occupying accumulation of blood in the subdural space; and the combined effect of these two detrimental processes created by the same mechanism of injury, result in brain herniations, loss of control of the vital functions, and death.

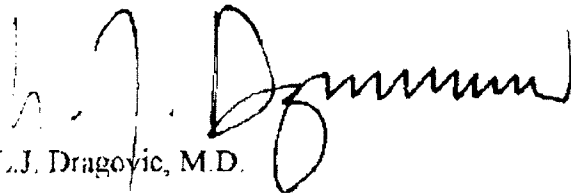
2

While Mr. Kanthak sustained a non-displaced fracture of the occipital bone which was an integral part of the injury pattern, it was not the fracture lines in the bone of the skull that caused his death; rather, it was the severe brain swelling resulting from the subdural bleeding and the contre-coup contusions in the front part of the brain that caused his demise.

The described mechanism is invariably present in this type of head trauma and is irrelevant of presence of absence of a helmet on the head.

I trust this answers your query.

Sincerely,



L.J. Dragovic, M.D.